

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Judith Martin,

Civil No. 10-1825 (MJD/LIB)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

Wyeth d/b/a Wyeth, Inc.; Wyeth, Inc.;
Wyeth Pharmaceuticals Inc.; Pharmacia
& Upjohn Company; Pfizer, Inc.,

Defendants.

This matter came before the undersigned United States Magistrate Judge on a routine supervision of the cases that pend before us and a general assignment made in accordance with the provisions of 28 U.S.C. § 636(b)(1)(A).

Plaintiff commenced this action on April 28, 2010. On September 13, 2010, it having appeared that 120 days had passed and Defendants had not been served with a copy of the summons and complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure, the Court issued an Order stating:

Within twenty days of the date of this order, Plaintiff shall provide proof of service, or show good cause for an extension of time in which service can be effectuated, failing which it shall be recommended that this action be dismissed for failure to effect proper service and failure to prosecute.

(Dkt. 5, at pp. 1-2); see also, Fed. R. Civ. Pro. 4(m) ("If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time").

It has now been more than 20 days, and Plaintiff has failed to abide by the terms of the Court's September 13, 2010 Order. Since Plaintiff has been forewarned of the potential consequences for failing to timely serve Defendants and for failing to abide by the Court's Orders, the Court recommends that this action be dismissed.

Based upon the above, and upon all the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED:

That this action be dismissed without prejudice for failure to comply with the Court's September 13, 2010 Order, for failure to effect proper service on Defendants, and for lack of prosecution.

Dated: November 1, 2010


Leo I. Brisbois
U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by November 15, 2010**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.